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Date: 3/5/2018 1:36:15 PM

Subject: Briefing paper for today's Deschutes TMDLs mtg

Attached you will find the briefing document for today's meeting to discuss the Deschutes TMDL litigation.

-----Original Appointment-----

From: Goodin, John

Sent: Monday, March 05, 2018 3:08 PM

To: Goodin, John; Wall, Tom; Havard, James; Brown, Leah; Curtin, James; Croxtion, David; Hunter, Chris

Cc: Zell, Christopher; Hodgkiss, Miranda; Lewicki, Chris; Connors, Sandra; Hunter, Christopher

Subject: Deschutes TMDLs

When: Monday, March 05, 2018 5:00 PM-6:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW

Added Tom Wall's Conference dial in number:

(b) (6)

Conf. ID: (b) (6)

EPA REGION 10 OWW TOPIC BRIEFING: Deschutes River TMDL Process Options
DRAFT - INTERNAL and DELIBERATIVE
February 23, 2017

Purpose

This briefing paper serves to outline process options for taking action on the Deschutes River TMDL in Washington. Each option is associated with an approximate time to complete, along with considerations for how the action could impact the TMDL program (b)(5)

Background

Ecology originally submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. The original TMDL addressed 73 Water Quality Limited Segments (WQLS) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment). By letter dated July 17, 2017, Ecology resubmitted the Deschutes TMDL but asked EPA “to focus on 23 segments” identified in Attachment A. Ecology did not expressly withdraw the larger-in-scale 2015 TMDL. In its July 2017 letter Ecology also said it (1) “augments the TMDL by clarifying” two WLAs for temperature to all permitted stormwater sources and (2) “clarifies the TMDL” by expressing bacteria allocation in daily units” as shown in Attachment B.

By letter dated August 23, 2017, Northwest Environmental Advocates (“NWEA”) notified EPA that it intended to file suit for EPA’s failure to take action on the 2015 TMDL submittal. On November 6, 2017, NWEA filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (“CWA”) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state’s TMDL submission within 30 days of submittal. EPA filed its answer to NWEA’s complaint on January 12, 2018. NWEA has indicated that it intends to seek discovery (at least with respect to remedy) and is willing to postpone briefing for as long as six months to provide ample time for the discovery process. Discovery will require extensive resources from R10 programs and ORC. EPA and NWEA will file a joint status report on March 9, 2018.

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EPA REGION 10 OWW TOPIC BRIEFING: Deschutes River TMDL Process Options
DRAFT - INTERNAL and DELIBERATIVE
February 23, 2017

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